IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

CRP.No. 1960 of 2003(F)

AGAINST THE ORDER DATED 19/06/2003 IN EP.206/2001. IN OS.461/1998 of PRL.M.C.KOZHIKODE-I

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REVN. PETITIONER: PTR.INCRP.RSPT.IN EP.JUDGMENT DEBTOR.

T.UNNIKRISHNAN NAIR, S/O.RAGHAVAN NAIR,
RESIDING AT MUNDI PARAMBA, KOTTOOLI AMSOM AND DESOM, KOZHIKODE TALUK.

BY ADVS. SRI.S.V.BALAKRISHNA IYER
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN
SRI.HARISH R. MENON

RESPONDENT/PETITIONER/DECREE HOLDER:

K.P.KUNHIRAMAN, S/O.THOOPAN,
ASWATHI, PIPE LINE ROAD, KOTTOOLI,
AMSOM AND DESOM, KOZHIKODE TALUK.

BY ADVS. SRI.SURESH KUMAR KODOTH
SRI.V.T.MADHAVANUNNI

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER IN I.A. NO.2184 OF 2003 IN C.R.P.NO.1960 OF 2003.

DISMISSED

7.12.2007 Sd/-(HARUN-UL-RASHID, JUDGE)

HARUN-UL-RASHID, J.

C.R.P.NO. 1960 OF 2003

Dated this the 7th day of December, 2007

O R D E R

This Civil Revision Petition is filed by the judgment debtor in E.P. No.206 of 2001 in O.S. No.461 of 1998 on the file of the Principal Munsiff's Court I, Kozhikode against the order dated 19.6.2003. The respondent is the plaintiff-decree holder in the suit. A decree was passed granting an injunction restraining the defendant and his men from reducing or obstructing the decree schedule road. The allegation in the execution petition filed before the court below was that the judgment debtor had willfully erected concrete pillars in the decree schedule road on 17.10.2001 and thereby violated the decree for perpetual injunction granted by the court below. It was also averred that the width of the pathway was obstructed and reduced by the said act.

2. The revision petitioner who is the respondent in the execution petition contends that the dispute between the parties was once decided in O.S. No.547 of 1995 and that the subject matter of the said suit and the present suit in which the decree was drawn out pertained to the same road.

He also contends that the prayer of the decree holder herein who was the plaintiff in O.S. No.547 of 1995 on similar ground was dismissed by the court below and that it is for the same road that the present decree was drawn out. The revision petitioner further contends that the decree holder in the suit had initiated proceedings under Section 133 of the Code of Civil Procedure as M.C. No.5279 of 2001 on the file of Sub Divisional Magistrate, Kozhikode and that in the said proceedings, the Sub Divisional Magistrate directed the revision petitioner to protect the southern boundary of the respondent's property finding that the passers thereby including the complainant were likely to be put in a dangerous situation since the decree schedule road was lying at a height of about 20 feet from the respondent's property. The learned Magistrate also directed the respondent to put up barbed wire fence by erecting cement beams in order to avoid any kind of danger. According to the revision petitioner, he planted 15 concrete posts along the southern side of the road incurring heavy expenditure and put up iron wire fencing in due compliance of the order passed by the Sub Divisional Magistrate, Kozhikode and hence the execution petition filed by the respondent herein under Order XX1 Rule 32 of the Code of Civil Procedure for the arrest and detention of the petitioner alleging reduction of the width of the road is without any bona fides.

3. The execution court found that the revision petitioner had put up barbed wire fencing in the north-south direction erecting concrete pillars and thereby reduced the width of the decree schedule road as a result of which its utility as a wide road was diminished. Thus finding that the revision petitioner had violated Ext.A1 decree, the execution court ordered arrest and detention of the revision petitioner till the decretal portion of the suit was enforced and the earlier situation restored.

4. I have noticed the fact that the erection of the cement pillars in the decree schedule road and the putting up of wire fencing through the cement pillars by the revision petitioner was in due compliance of the order of the Sub Divisional Magistrate, Kozhikode in M.C. No.5279 of 2001, a proceeding initiated by the decree holder in the suit in order to protect himself and the other users of the decree schedule road. The compliant before the Magistrate was necessitated due to the possibility of landslide because of the peculiar lie of the road and the property of the revision petitioner. I find that the work done by the revision petitioner was in due compliance of the order passed by the Sub Divisional Magistrate, Kozhikode. He had acted in terms of the lawful direction given by the learned Magistrate in the motion initiated by the respondent himself and even if the said act is in contravention of the terms of the

decree, it cannot be said that the act of the revision petitioner was willful disobedience or violation of the decree. Therefore, I hold that there is no violation of the decree, as alleged by the respondent - decree holder.

5. Learned counsel for the respondent submits that the position of fencing and the concrete pillars have reduced the width of the decree schedule road and that is causing difficulty for plying vehicles through the road especially when there is incessant rain during monsoons. Counsel prays for removal of the fencing so that the vehicular traffic can be made smooth. I am of view that the request of the counsel for the respondent can be considered favourably. The respondent is at liberty to remove the concrete pillars and fencing materials. He shall do some other arrangements on the side of the decree schedule road in order to avert danger to the users of the road.

In the result, the revision petition is allowed setting aside the impugned order. There will be no order as to costs.

(HARUN-UL-RASHID, JUDGE)

sp/

KURIAN JOSEPH &
HAURN-UL-RASHID, JJ.

L.A.A.NO

JUDGMENT

4TH DECEMBER, 2007